

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

HERITAGE HUMAN TECHNOLOGY MANAGEMENT, LLC¹

Employer

and

CASE 7-RC-22242

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE, AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO

Petitioner

APPEARANCES:

Drew Pinkney, Attorney, of Dearborn, Michigan, for the Employer.
Gary R. Klein, of Jackson, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer's name appears as corrected at the hearing.

² Both parties filed briefs, which were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer leases personnel to Delphi Automotive Systems, Inc., an industrial plant in Lansing, Michigan that manufactures automotive instrument panels for customer General Motors Corporation. The Petitioner seeks to represent a unit of four line technicians, four industrial engineer technicians, five quality control technicians, and three information technology technicians. The Employer contends that the individuals in the first three categories are ineligible as supervisors, and that the persons in the fourth category are ineligible as confidential employees. The record does not support the Employer's theories, and therefore I find that the petitioned-for employees are an appropriate unit.

The high and middle reaches of the plant's hierarchy are managers and engineers employed by Delphi. The Employer supplies 3 human resource officials, at least 2 line supervisors, the 16 persons whose status is in dispute, and an undisclosed number of production line workers, called team technicians, whom the Petitioner already represents and who are covered by a contract with the Employer effective June 4, 2001 through June 5, 2005.³ There is no history of collective bargaining with respect to the petitioned-for employees, and no evidence of any prior Board determinations regarding the status of the employees at issue.

Line Technicians:

Delphi runs two production lines on each of its two shifts. Each line is staffed by about 40 unionized team technicians, monitored by a line technician, and headed by a line supervisor. The main responsibilities of the line technician are to observe the work taking place on the line, repair equipment, complete paperwork regarding the condition of the equipment, relieve team technicians on the line when necessary, help train new employees, and act as a liaison between the production workers and the line supervisor.

³ The parties stipulated, and I concur, that Line Supervisors Troy Crosslan and Marshall Gurd are statutory supervisors by virtue of their authority to hire, fire, and discipline employees. Crosslan and Gurd are the only Employer line supervisors named in the record, but it appears that there may be more on another shift.

Line technicians do not have authority to hire, fire, suspend, lay off, recall, promote, or reward employees, adjust grievances of employees, transfer employees to different job classifications, or recommend any such actions. They have no role in interviewing candidates for hire, preparing written job performance evaluations, administering the Employer's absence program, establishing work standards, authorizing overtime, or scheduling vacations or days off. The Employer premises its position regarding their supervisory status on their asserted authority to direct and discipline the workforce, and to substitute for the line supervisor.

Direction: The production lines have roughly 30 work stations with varying protocols but identical pay. Employees new to a station receive on-the-job training from line technicians and fellow team technicians. They are then "audited," i.e., tested, on the requirements of the station. Audits, which are apparently designed by Delphi's engineering staff, are conducted by fellow team technicians, line technicians, industrial engineer technicians, and quality control personnel. Whether the employee passes the audit is determined by an industrial engineer technician. Failure means neither discipline nor demotion, but simply a retest. Success qualifies the employee to be "certified" to perform at that station. A chart tracks the stations at which every team technician is certified.

At the beginning of the shift, the line technician, relying on the chart that shows the stations at which workers are certified, pairs team technicians with appropriate work stations. The line supervisor often aids the line technician in this task or completes it himself if the line technician has not yet arrived. Designations made by the line technician are sometimes modified by the line supervisor, although how often or why this occurs was not disclosed. Through the course of the shift, the line technician may reassign team technicians to different positions on the line, again using the certification chart and the line supervisor's outstanding instructions as a guideline.

When equipment fails, a team technician falls behind, product quality is suffering, or line workers need a respite, the line technician may cause the production line to be shut down temporarily. One line technician testified that she never shuts down the line without first discussing the situation with her line supervisor and obtaining his prior approval. Another testified that she either consults first with her line supervisor, or acts on her own within clear parameters set by her line supervisor. Team technicians have the same authority as do line technicians to initiate a temporary cessation of the production line.

Occasionally, a line worker will ask permission to leave his work station for a time. One line technician invariably obtains an answer from the line supervisor and then relates the supervisor's response to the inquiring employee. Another responds on her own, following principles established by her line supervisor.

Discipline: Line technicians have no authority to issue discipline in the course of their regular jobs. Their function is limited to reporting employee misconduct and infractions to the line supervisor. A line technician may suggest that a particular penalty be imposed, but such suggestions are made infrequently and are often not adopted.

Substitution as Supervisor: Line technicians fill in for absent line supervisors on about 16 to 20 days throughout the year. Acting supervisory stints of four hours or less do not trigger any premium pay, but substitution for more than four hours entitles the line technician to a \$50 lump-sum daily bonus. As acting line supervisors, line technicians are authorized to issue oral and written disciplinary notices on their own and may attend management meetings. The record does not disclose any additional statutory indicia of supervisory authority possessed or exercised by line technicians when they serve as line supervisors.⁴

Industrial Engineer Technicians:

The principal function of these individuals, sometimes called IEs, is to develop alternative proposals by which Delphi may reduce its costs and improve its production efficiency. IEs conduct time and efficiency investigations, label parts, maintain the engineering laboratory, train new hires, and, as noted above, certify team technicians as proficient at particular work stations. They report directly to Delphi's Manufacturing Engineer Mike Longcor.⁵

IEs do not formulate production or job standards. Rather, their ideas on how to streamline production are passed along to Delphi's engineering department, which decides whether, when, and how to implement the proposals without further input from the IEs. Devising more efficient ways to manufacture the product will theoretically result in a leaner operation requiring fewer work stations and, consequently, fewer employees. In fact, IEs work under a specific mandate emanating from Delphi to find ways to reduce the number of work stations on the production lines. Thus far, IEs' suggestions have not prompted Delphi to decrease its complement of production employees.

IEs are not required as a condition of employment to hold any technical or college degrees, nor must they have specialized training prior to being hired. One incumbent was promoted to IE from his position as an assembly worker.

⁴ The record does not support the Employer's assertion on brief that line technicians "are empowered to perform their supervisory duties at any moment during the day whether a supervisor is present or not." (Br. 6)

⁵ The parties stipulated, and I agree, that Longcor is a supervisor within the meaning of the Act due to his authority to hire, fire, and discipline employees.

Other than what the Employer urges is inferable from the foregoing, IEs do not possess any of the enumerated indicia of statutory supervisory authority.

Quality Control Technicians:

Delphi's quality engineering department is headed by General Supervisor Chris Cooper, a Delphi manager. The five quality control technicians sought herein report directly to Cooper. John Wilson, the supplier quality technician, helps assure that parts purchased from vendors are of adequate grade. Wilson neither orders supplies nor negotiates supplier contracts. Customer support quality technicians Fran Hummel and Sandra Keller, who are in constant communication with customer General Motors through visits and cell phone conversations, carry GM's concerns about quality to appropriate personnel within the Delphi plant. Plant quality technicians Joe Collier and Yancy Edger interface among customer, supplier, and plant production representatives to help identify and resolve quality problems. None of the quality control technicians orders supplies or negotiates contracts with suppliers or customers.

Evidence of interaction with employees was limited to testimony about customer support quality technicians. First, they help conduct work station certification audits, although there is no evidence that they are authorized to take personnel action as a result of the audits. Second, a particular customer support quality technician once or twice spearheaded an effort to have employees check parts that customer GM claimed were defective.

The sought quality control technicians have no staffs, do not directly oversee production employees, and, beyond what may be claimed from the foregoing, possess no supervisory duties outlined in Section 2(11) of the Act.

Information Technology Technicians:

Information technicians, called ITs, report directly to Delphi's Manufacturing Engineer General Supervisor Mike Dreon. They are responsible for servicing Delphi's network servers and personal computers. One of their accomplishments was devising a software program allowing human resources officials to track employees' photographs, home addresses, disciplinary history, and grievances. The program does not encompass wage data. ITs do not input, delete, or control the contents of the database, nor do they normally access it. The sole exception cited in the record was that they may be asked by a line supervisor to retrieve an employee home number, in which case ITs comply only in the presence of the line supervisor.

ITs have virtually no contact with employees. Unlike the other disputed individuals who are paid at a rate of \$14 per hour, ITs are paid a salary roughly

equivalent to \$22 per hour. Computer experience is preferred, but no degree is required as a condition of being hired.

The relationship of ITs to the software program described above is the sole basis on which the Employer asserts that ITs are ineligible as confidential employees.

The primary supervisory indicia enumerated in Section 2(11) of the Act are read in the disjunctive, so that possession of any one of the 12 listed authorities can invest an individual with supervisory status. The burden of proof rests with the party seeking to exclude the individual as a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999). The Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Unifirst Corp.*, 335 NLRB No. 58, slip op. at 8 (Aug. 27, 2001).

If every minor order made its issuer a supervisor, our industrial culture would be predominantly supervisory. *Providence Hospital*, 320 NLRB 717, 725 (1996), quoting *NLRB v. Security Guard Service*, 384 F.2d 143, 151 (5th Cir. 1967). To separate straw bosses from true supervisors, the Act therefore prescribes that the exercise of supervisory indicia be in the interest of the employer and require the use of independent judgment. This means that neither the discharge of Section 2(11) functions in a routine or clerical manner, nor the use of independent judgment to solve problems unrelated to Section 2(11) functions, qualifies as supervisory. *Alois Box Co.*, 326 NLRB 1177 (1998).

The Employer has not satisfied its burden to show that line, industrial engineer, or quality control technicians possess statutory supervisory authority. That they may perform valuable services for Delphi and the Employer, utilize reasoning skills, or exercise discretion in respect to their dealings with Delphi or its suppliers and customers, is not the equivalent of rendering independent judgment in the performance of any of the 12 primary indicia of statutory supervision. *Bechtel Construction Co.*, 312 NLRB 34, 41 (1993); *NLRB v. Browne & Sharpe Mfg.*, 169 F.2d 331, 334 (1st Cir. 1948).

In the case of industrial engineer technicians, creating alternative engineer scenarios that may permit Delphi to tighten its operation is simply an exploration of what is technologically feasible. Because IEs have no control over whether their technical suggestions are adopted, nor do they make personnel recommendations in conjunction with their proposals, it cannot be concluded that they effectively recommend layoffs or any other actions within the ambit of Section 2(11). *Chrysler Corp. (Airtemp Div.)*, 192 NLRB 1208, 1209 (1971) (time-study employees not supervisory where they recommend ways to save money, but not layoffs of particular workers). In *Case Corp.*, 304 NLRB 939, 949 (1991), enfd. 995 F.2d 700 (7th Cir. 1993), the Board found industrial engineers to be nonsupervisory despite their conducting studies relied upon in resolving grievances, determining performance standards, and suggesting method changes to increase

efficiency. The IEs at issue here have even more limited duties and *a fortiori* cannot be considered supervisors.

Similarly, because certifying team technicians as proficient at particular work stations results in neither reward nor penalty, the monitoring process -- shared even by unionized team technicians -- is merely the exercise of a technical judgment as to whether audited workers are performing in accordance with Delphi's job standards. Making such technical assessments and grading against standards is not a delegation of supervisory authority. *Aardvark Post*, 331 NLRB 320, 321 (2000); *Brown & Root*, 314 NLRB 19, 22 (1994). It is more akin to a first-hand progress report, the responsibility for which does not confer supervisory status. *Custom Mattress Mfg.*, 327 NLRB 111 (1998); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996); *Passavant Health Center*, 284 NLRB 887 (1987).

The Employer contends that line technicians responsibly direct the unionized workforce. Assignments and direction of employees do not constitute supervisory authority, however, when exercised in a routine manner or circumscribed by management directives or a collective bargaining agreement. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995); *Dynamic Science*, 334 NLRB No. 57 (June 27, 2001). Line technicians assign work stations by following the certification chart and their supervisors' direction. If they temporarily excuse employees from the line, it is in accordance with the supervisor's preestablished rules or his specific grant of permission. They shut down the production line in consultation with their supervisors or pursuant to specific outstanding instructions. In fact, the guidelines for shutting down the line are so formulaic that even production workers are entitled to make such decisions. These actions are too routine and circumscribed to necessitate the use of independent judgment in a statutory sense. *Dynamic Science*, supra, slip op. at 1; *KGW-TV*, 329 NLRB 378, 382 (1999); *Hausner Hard-Chrome of KY*, 326 NLRB 426, 427 (1998).

The responsibility of line technicians in the area of discipline is to serve as conduits by reporting misbehavior. Higher management, which independently determines if misconduct has occurred and decides the penalty therefor, does not elicit their recommendations in the process. Unsolicited recommendations from line technicians are atypical and not demonstrably effective. The Board has repeatedly held with court approval that a reportorial function as served by line technicians here is not a predicate for a supervisory finding. *Ohio Masonic Home*, 295 NLRB 390 (1989); *NLRB v. Attleboro Associates*, 176 F.3d 154, 174 (3rd Cir. 1999); *NLRB v. Grancare*, 170 F.3d 662, 668 (7th Cir. 1999); *NLRB v. City Yellow Cab Co.*, 344 F.2d 575, 580-581 (6th Cir. 1965).

The Employer argues that line technicians are supervisors because they substitute for line supervisors. Where the employee at issue is engaged part of the time in a supervisory position and the rest of the time in a nonsupervisory capacity, the legal

standard for a supervisory determination is whether the individual spends a regular and substantial portion of his working time in a supervisory position or whether such substitution is merely sporadic and insignificant. *Benchmark Mechanical Contractors*, supra; *Canonie Transportation Co.*, 289 NLRB 299, 300 (1988); *Aladdin Hotel*, 270 NLRB 838 (1984). In *Canonie*, individuals who worked as supervisors 17 weeks in a year from 8 to 40 hours each week were deemed to have regular and substantial supervisory duties. In contrast, the Board has held that substituting for supervisors about 10% of the time, on occasions of sickness, vacation leave, and other unscheduled times, is irregular and sporadic, and therefore insufficient to establish supervisory authority. *Hexacomb Corp.*, 313 NLRB 983, 984 (1994). Line technicians serve as line supervisors only when the latter are absent. This occurs, according to the record, up to 20 times per year or approximately 8% of the time. Supervisory substitution of this impromptu, unscheduled nature is not regular and substantial, and therefore does not qualify for a supervisory finding.

The record also fails to establish the confidential status of information technology technicians. Confidential employees are those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitute for employees having such duties. *NLRB v. Hendricks County Electric Membership Corp.*, 454 U.S. 170 (1981); *Ladish Co.*, 178 NLRB 90 (1969); *B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956). These factors are assessed in the conjunctive. *Weyerhaeuser Co.*, 173 NLRB 1170, 1172 (1969). Access to either personnel records or grievance information is considered insufficient reason to deny employees representation on the basis of confidential status. *Lincoln Park Nursing Home*, 318 NLRB 1160, 1164 (1995); *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995); *Inland Steel Co.*, 308 NLRB 868, 873 (1992); *Greyhound Lines*, 257 NLRB 477, 480 (1981), enf. 676 F.2d 692 (4th Cir. 1982).

ITs do not participate either directly or indirectly in collective bargaining, grievance meetings, disciplinary hearings, or any other labor relations conferences. There is no showing that they are present when labor relations matters are discussed. The assistance they render to human resource managers is of a limited and technical, not confidential, variety. The Employer asserts that ITs may be in a position to view confidential material electronically, but the Board uniformly rejects such speculative contentions as an inadequate basis for a confidential status finding. *Swift & Co.*, 119 NLRB 1556, 1567 (1958). The Employer seeks to exclude ITs solely on their urged confidential status. I find that the test has not been met, and they are properly included in the petitioned-for unit.

The Employer disagrees with the Petitioner's proposed unit only on the grounds discussed above and does not interpose community-of-interest objections. The sought employees can all be classified as technical employees. They share similar terms and conditions of employment, use the same break and rest rooms, and enjoy the same fringe

benefits. I find that they warrant amalgamation into a single discrete group on either traditional community-of-interest grounds or as a residual unit to the existing production employees with whom they either have frequent interaction or are functionally related. *Carl Buddig & Co.*, 328 NLRB 929, 930 (1999).

6. Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time line technicians, industrial engineer technicians, plant quality control technicians, supplier quality control technicians, customer support quality control technicians, and information technology technicians employed by the Employer at 4521 Mount Hope Road, Lansing, Michigan; but excluding supervisors and guards as defined in the Act, and all other employees.

Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining by International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, (UAW), AFL-CIO.⁶

Dated at Detroit, Michigan, this 14th day of June, 2002.

(SEAL)

/s/ William C. Schaub, Jr.

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⁶ The parties waived their respective rights to request review of this Decision and Direction of Election.